IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.1717/02
Chouthu & Ors.
Vs.
The Board of Revenue, Ajmer & Ors.

9.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri M.M. Ranjan for petitioners.
Shri S.C. Gupta for respondent.

The petitioners have challenged the order passed by the Board of Revenue dated 2.1.2002 whereby it upheld the order passed by the Sub-Divisional Officer (South), Jaipur dated 2.1.2002. The Sub-Divisional Officer by his order dated 2.1.2002 while allowing the application of the contesting respondents directed the petitioners to restore possession of the disputed land to the respondents. This order when challenged by the petitioners before the learned Board of Revenue by filing revision petition, the Board of Revenue upheld

the same by rejecting revision petition.

Shri M.M. Ranjan, the learned counsel for the petitioner argued that the Sub-Divisional Officer has presumed that the contesting respondents were dispossessed from the land in dispute during the pendency of the writ petition filed before this Court and arrived at such finding in a summary manner. He did not at all hold any enquiry. It has not been indicated in the order as to what was the basis for the learned Sub-Divisional Officer arriving at the conclusion that the petitioners had dispossessed the respondents during the pendency of their earlier writ petition before this Court. The learned Board of Revenue also erred in upholding the said order while rejecting their revision petition. It was therefore prayed that the writ petition be allowed.

On the other hand, Shri S.C. Gupta, the learned

counsel for the respondents opposed the writ petition and argued that the petitioners had earlier filed the writ petition before this Court challenging the judgment of the Board of Revenue dated 15.3.96 whereby order passed by the Revenue Appellate Authority dated 15.11.90 was set aside and the matter was remanded back to Revenue Appellate Authority for deciding it afresh. The respondent no.3 was already in possession when the aforesaid writ petition was filed in which this Court passed an order on 24.7.96 directing the parties to maintain status quo. The petitioners however taking advantage of that situation forcibly evicted the respondent from the possession. Grievance to this effect was made when the writ petition was finally dismissed by this Court vide order dated 21.5.97. It was observed by the Court that the petitioners cannot take advantage of the interim order dated 24.7.96 and it was directed that

the possession of the land in dispute be restored to the respondent by maintaining status quo as existing on 15.3.96. It was argued that 15.3.96 was the date on which the order was passed by the Board of Revenue and on that date the possession was with the respondents. Shri S.C. Gupta further argued that the respondents had filed injunction suit before Assistant Collector, Sanganger who had already by his order dated 27.6.87 directed the parties not to interfere with the possession of the respondents and that the suit is still pending. When the petitioners challenged the judgment of the learned Single Judge dated 21.5.97 before the division bench, the division bench although partly allowed the appeal but set aside the direction issued by the learned Single Judge for maintaining of status quo as on 15.3.1996 and set the respondents at liberty to take steps in accordance with law before the trial court

for claiming restoration of possession on the basis of anything done under the interim order passed by the learned Single Judge. It was therefore that the respondents filed an application before the learned Sub-Divisional Officer for restoration of possession and the learned Sub-Divisional Officer on consideration of the entire matter put the petitioners back in possession. The Board of Revenue has also concurred with that view. It was submitted that the neither the Sub-Divisional Officer, nor the Board of Revenue have committed any error of law. The writ petition is therefore liable to be dismissed.

Having heard the learned counsel for the parties and perused the material on record, I find that the liberty was given to the respondents by the division bench of this Court in the appeal preferred by none other than the petitioners herein that the respondents were free to

take steps in accordance with law before the trial court for claiming restoration of possession on the basis of anything under the interim order passed by the learned Single Judge. The learned SDO has on consideration of the entire material especially the interim order passed by the Assistant Collector, Sanganer on 27.6.87 found that the respondents were in possession and taking advantage of the status quo order passed by the learned Single Judge of this Court in the aforesaid writ petition on 24.7.96, the petitioner continued in possession so long having illegally evicted the respondents from the land in dispute. It was therefore directed that the respondents shall be restored back in possession. The learned Board of Revenue also found reason in what was being contended by the respondent and therefore upheld the order of the learned Sub-Divisional Officer.

The learned counsel for the petitioners has not been able to show as to on what basis, they are claiming possession of the land in dispute. He also could not show as to whether the land in dispute is entered in the khatedari of the petitioners. The petitioners, even otherwise, could not establish as to how they have a better right or title in the disputed land.

In the facts and circumstances of the case, I do not find that either of the orders impugned herein suffer from any error apparent on the face of the record so as to call for interference by this Court. The writ petition being devoid of merit is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/